

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JEFF OLBERG, an individual *et al.*,

Plaintiffs,

v.

ALLSTATE INSURANCE COMPANY, an
Illinois corporation *et al.*,

Defendants.

CASE NO. C18-0573-JCC

ORDER

This matter comes before the Court on the parties' joint submission pursuant to Western District of Washington Local Civil Rule 37(a)(2) (Dkt. No. 72). Plaintiffs seek an order requiring Defendants Allstate Insurance Company and Allstate Fire and Casualty Insurance Company to produce several documents in unredacted form. (*See id.* at 1.) Having thoroughly considered the parties' briefing and the relevant record, the Court finds oral argument unnecessary and hereby GRANTS Plaintiffs' request for the reasons explained herein.

I. BACKGROUND

Plaintiffs bring a putative class action suit on behalf of Washington insureds against Defendants, asserting a variety of state law claims arising from Defendants' alleged erroneous valuations of total loss vehicles. (*See generally* Dkt. No. 50.) The Court has entered a protective order restricting the use of confidential information, including documents containing

1 “proprietary or competitive business information regarding business practices and/or policies” or
 2 “financial and/or valuation information,” produced in this action. (*See* Dkt. No. 32.)

3 Plaintiffs have served Defendants with two requests for production seeking documents
 4 related to Defendants’ valuation of total loss claims. (*See* Dkt. No. 72 at 4–5.)¹ Defendants
 5 objected to both requests for production, arguing that they were overly broad, were not relevant
 6 or reasonably calculated to lead to the discovery of admissible evidence, or sought proprietary
 7 business information. (*See id.*) Defendants have not asserted a claim of privilege as to the
 8 documents. (*Id.*) Ultimately, Defendants produced heavily redacted documents in response to
 9 Plaintiffs’ requests for production. (*Id.* at 2; *see* Dkt. Nos. 73-5, 73-6.) Defendants have provided
 10 Plaintiffs with a redaction log stating the grounds for each redaction. (*See* Dkt. No. 74-1.)

11 Defendants assert that they have redacted portions of the documents that “deal strictly
 12 with repairable vehicle claims” or are “non-responsive, irrelevant, and commercially sensitive as
 13 they pertain to financial information and personnel that have no bearing on the claims at issue in
 14 this suit.” (*See* Dkt. Nos. 72 at 3–4, 74 at 1–2.) Defendants further argue that, although a
 15 protective order has been entered in this action “and that documents produced herein are not to
 16 be used outside this litigation,” it should not be required to produce “irrelevant, non-responsive,

17 ¹ Plaintiffs’ relevant requests for productions read as follows:

18 **Request for Production No. 24:** Please produce all DOCUMENTS and ESI
 19 reflecting communications to, from, or regarding CCC Information Services
 20 relating to the application of condition adjustments to the values of comparable
 21 vehicles used to value total loss claims, including without limitation all
 22 correspondence, requests for proposals, program descriptions, marketing materials,
 23 representations about the uses and advantages of the CCC database, and quarterly
 (and any other periodic) reports and slideshows about adjusted vehicle values,
 vehicle mix, audit trending, normalized adjusted vehicle values, and average
 condition adjustment amounts.

24 **Request for Production No. 34:** Please produce all DOCUMENTS and ESI
 25 relating to ALLSTATE’s contracts with CCC to value its total loss claims including
 but not limited to internal communications, negotiations, results of due diligence
 performed on CCC, and communications with CCC.

26 (*See* Dkt. No. 72 at 4–5.)

1 yet commercially sensitive information to a nationwide class action plaintiffs' firm[, which]
 2 simply provides potential fodder for other unsubstantiated claims in the future." (Dkt. No. 72 at
 3 4.)

4 Plaintiffs seek an order compelling Defendants to produce unredacted versions of the
 5 documents. (*See id.* at 1.)² The parties certify that they have met and conferred in good faith
 6 pursuant to Western District of Washington Local Civil Rule 37(a)(2)(H) but remain at an
 7 impasse. (*See id.* at 2.)

8 **II. DISCUSSION**

9 Discovery motions are strongly disfavored. The Court has broad discretion in controlling
 10 discovery. *See Little v. City of Seattle*, 863 F.2d 681, 685 (9th Cir. 1988). "Parties may obtain
 11 discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and
 12 proportional to the needs of the case." Fed. R. Civ. P. 26(b)(1). Under Rule 26, the concept of
 13 relevance "has been construed broadly to encompass any matter that bears on, or that reasonably
 14 could lead to other matter that could bear on, any issue that is or may be in the case."
 15 *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 351 (1978). If the parties are unable to
 16 resolve their discovery issues, the requesting party may move for an order to compel. Fed. R.
 17 Civ. P. 37(a)(1).

18 District courts appear split on the issue of whether a party may unilaterally redact
 19 material the party considers nonresponsive or irrelevant from an otherwise responsive document.
 20 *See Bonnell v. Carnival Corp.*, 2014 WL 10979823, slip op. at 3 (S.D. Fla. Jan 2014). But the
 21 Court agrees with courts in this district that have disapproved of the practice. *See, e.g., Doe v.*
 22 *Trump*, 329 F.R.D. 262, 275–76 (W.D. Wash. 2018); *Krausz Indus., Ltd. v. Romac Indus.*, Case
 23 No. C10-1204-RSL, Dkt. No. 165 at 4–5 (W.D. Wash. 2011). Federal Rule of Civil Procedure 34
 24 concerns the discovery of "documents," not portions thereof, and "[i]t is the rare document that
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26 ² Plaintiffs assert that the Bates range of documents at issue is "ALLSTATE006129–
 947." (*See* Dkt. No. 72 at 11–12.)

contains only relevant information; and irrelevant information within an otherwise relevant document may provide context necessary to understand the relevant information.” *Trump*, 329 F.R.D. at 275–76. “Redaction is generally an inappropriate tool for excluding information that a party considers to be irrelevant or nonresponsive from documents that are otherwise responsive to a discovery request.” *Id.* at 275 (collecting cases). Moreover, redaction may render disclosed documents confusing or difficult to use, and lead to “the litigation of collateral issues and the needless expenditure of resources.” *Id.* at 276 (citing *In re Medeva Sec. Litig.*, 1995 WL 943468, slip op. at 3 (C.D. Cal. 1995)). The entry of a protective order limiting the use of sensitive or confidential information minimizes the potential harm of disclosing allegedly irrelevant information not subject to a claim of privilege. *See id.*; *Krausz Indus.*, C10-1204-RSL, Dkt. No. 165 at 5 (citing *Evon v. Law Offices of Sidney Mickell*, 2010 WL 4554767, slip op. at 2 n.1 (E.D. Cal. 2010)).

Absent a claim of privilege, Defendants’ assertion that the material at issue is irrelevant to this litigation is insufficient to justify their unilateral redactions of material from otherwise responsive documents. Defendants have not established that the redacted material cannot meet the low bar of relevance under the Federal Rules of Civil Procedure in light of Plaintiffs’ claims in this matter. *See* Fed. R. Civ. P. 26(b)(1); *Oppenheimer Fund*, 437 U.S. at 351; (*see generally* Dkt. Nos. 50, 72). Further, even assuming the material does not meet this low bar, the extensive nature of the redactions deprives the responsive documents of both context and clarity. *See Trump*, 329 F.R.D. at 275–76; (*see, e.g.*, Dkt. No. 73-5). Finally, despite Defendants’ concerns about the nature of Plaintiffs’ retained counsel, the Court is satisfied that the protective order entered in this case contains sufficient procedural safeguards to protect Defendants’ confidential information from improper use beyond this litigation. *See Trump*, 329 F.R.D. at 276; *Krausz*

1 *Indus.*, C10-1204-RSL, Dkt. No. 165 at 5; (Dkt. No. 32.)³

2 **III. CONCLUSION**

3 For the foregoing reasons, Plaintiffs' request for an order compelling Defendants Allstate
4 Insurance Company and Allstate Fire and Casualty Insurance Company to produce unredacted
5 forms of the responsive documents at issue (Dkt. No. 72) is GRANTED. Defendants Allstate
6 Insurance Company and Allstate Fire and Casualty Insurance Company shall provide Plaintiffs
7 with unredacted versions of the responsive documents at issue in this motion no later than 14
8 days from the date this order is issued.

9 DATED this 14th day of November 2019.

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13 John C. Coughenour
14 UNITED STATES DISTRICT JUDGE
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25 ³ The Court does not hold that a party may never redact a document on the grounds of
26 irrelevance. However, Defendants have not provided sufficient justification here, especially
given the protective order already in place for this litigation.